

1 Volume: I  
2 Pages: 1 -  
3 Exhibits: 2

4 UNITED STATES DISTRICT  
5 DISTRICT OF MASSACHUSETTS

6 CIVIL ACTION NO. 04-10106 T

7 ZHANNA CHIZHIK, )  
8 Plaintiff, )  
9 v. )  
10 SEA HUNT BOATS, INC., TROPICLAND )  
11 MARINE AND TACKLE, INC., )  
Defendant.

12  
13 DEPOSITION of **AMIR LASHGARI**, a witness called o  
14 behalf of the Defendant Sea Hunt Boats, Inc., t en  
15 pursuant to the applicable provisions of the  
16 Massachusetts Rules of Civil procedure, before hn  
17 F. Kielty, a Notary Public in and for the  
18 Commonwealth of Massachusetts, at the Law Offic of  
19 Murphy, Hesse, Toomey & Lehane, 300 Crown Colon  
20 Drive, Quincy, Massachusetts, on Monday, May 16  
21 2005, commencing at 2:20 p.m.

22  
23 JOHN F. KIELTY  
24 2 Garrett Place  
Plymouth, Massachusetts 02360  
(508) 759-6767

1 APPEARANCES

2  
3 DAVID B. KAPLAN, ESQUIRE  
4 The Kaplan/Bond Group  
5 88 Black Falcon Avenue  
6 Suite 301  
7 Boston, Massachusetts 02210  
8 Attorney for the Plaintiff

9 WILLIAM P. BREEN, JR., ESQUIRE  
10 Murphy, Hesse, Toomey & Lehane, LLP  
11 300 Crown Colony Drive  
12 Suite 410  
13 Post Office Box 9126  
14 Quincy, Massachusetts 02269  
15 Attorney for the Defendant Sea Hunt Boats, c.

16 JAMES T. SCAMBY, ESQUIRE  
17 Tucker, Heifetz & Saltzman, LLP  
18 Three School Street  
19 Boston, Massachusetts 02108  
20 Attorney for the Defendant Tropicland Marin  
21 and Tackle, Inc.

22

23

24

1 Q. Did the boat, to your observation, appear to  
2 be functioning properly on the way out to the  
3 fishing area?

4 A. It seems pretty nice.

5 Q. On the parts of your trip where the waves  
6 were choppy or where the sea conditions were choppy,  
7 about how high were the waves that you saw?

8 A. I'm really bad with measurements. I'm lost  
9 with measurements and time. As far as -- I mean it  
10 wasn't anything that we were concerned about. As  
11 far as the size of them, I -- just regular waves  
12 normal waves. I mean, I don't know the size of them.  
13 When you say -- with your question, are they -- do  
14 you mean the boat -- the waves were continuous, or  
15 the waves were high? What is the question? I'm not  
16 understanding that.

17 Q. That is fair enough. I am glad you said  
18 something Mr. Lashgari. If you are asked anything  
19 you don't understand, I want you to let me know --

20 A. Uh-huh. (Indicates affirmatively).

21 Q. -- all right? Okay?

22 A. Yes.

23 Q. Have you ever heard of people speak about  
24 three-foot swells or two-foot swells? Is that .

1 Q. For how long were you waiting for Mr.  
2 Zilberman after you arrived there?

3 A. After I took my line in, another ten,  
4 15 minutes.

5 Q. Do you recall anything else that happened  
6 before you found yourself being turned upside down?

7 A. Negative.

8 Q. Did you see a wave approaching?

9 A. I didn't. I had read that I had said th  
10 it was a big wave at one point, but as I said, t  
11 me, everything at that time was huge. I mean,  
12 everything for me was huge. Just the fact that  
13 turned in the water and turned around, that's --  
14 that to me was huge. So as far as seeing a wave  
15 no, I did not see a wave that would come and hit  
16 us.

17 Q. Your testimony is you did not see a wave  
18 that came and hit your boat before you were pitched  
19 in the direction you said?

20 A. Correct. Well, my testimony is that I  
21 had -- I believe I had said there was a 20-foot wave  
22 at one point, but in the excitement of the matter,  
23 as I said, everything was huge. So there was no  
24 20-foot wave.

1           But the wave that hit us, what I -- the .me  
2           I remember I was in the water, he's got his line  
3           I'm talking to Chizhik, next thing, the boat tur ed,  
4           and that's when I went in the water. (Witness  
5           indicating.)

6           Q.       So you didn't see a 20-foot wave?

7           A.       Correct.

8           Q.       Did you see any wave approaching your b e t  
9           before you turned and went in the water?

10          A.       Just nothing out of the ordinary, nothin  
11           out of the ordinary. At that time when it  
12           happened -- when I think about it, nothing out  
13           the ordinary.

14          Q.       Who did you tell that you saw a 20-foot  
15           wave?

16          A.       I don't recall, could be a reporter. I id  
17           talk to a reporter, and I don't recall who I sa  
18           that to.

19          Q.       You did speak with a number of newspape  
20           reporters after the incident, right?

21          A.       Not a number. I believe I spoke with c  
22           person, and some people who would just call, yo  
23           know, calling left and right.

24          Q.       After this accident, you spoke with a F ston

1           Globe reporter named John Ellement, correct?

2           A.       I'm thinking if I spoke to him in person or  
3           over the phone, but I don't remember. But the name  
4           sounds familiar, yes.

5           Q.       After you spoke to one or more reporters  
6           there were newspaper articles printed on what  
7           happened, correct?

8           A.       Correct.

9           Q.       And did you read any of the articles that  
10          talked about what had happened?

11          A.       The first two, three lines, yes, but the  
12          article in the Globe, I read it in whole, yes.

13          Q.       That was an article called, "Clinging To A  
14          Hope," right?

15          A.       I don't remember the name of the article.

16            MR. BREEN: That is it.

17            MR. KAPLAN: Okay.

18            MR. BREEN: That is actually your copy. Do  
19          you have it already?

20            (Discussion off the record.)

21          BY MR. BREEN:

22          Q.       Why don't I just make sure I didn't write on  
23          this one, Mr. Lashgari. Mr. Lashgari, I am sending  
24          you a document that is a copy of the text of ar

1           article on boston.com called, "Clinging To A Hop   "  
2           It was, according to this, reported and published on  
3           page A1 of the Metro/Region section on May 27th  
4           2003. I would ask you to take a moment, please, and  
5           look at that article and --

6           MR. KAPLAN: Wait. Is there a question or  
7           him?

8           MR. BREEN: Yes.

9           MR. KAPLAN: I object.

10          BY MR. BREEN:

11          Q.        My question is, first off, have you ever  
12           seen this article before?

13          A.        I have seen it, but I haven't read it  
14           thoroughly.

15          Q.        If you would take a moment, please, and read  
16           it to yourself?

17          A.        Do I have to read the whole thing, because  
18           I usually don't have patience to read the -- I  
19           mean, after the first four or five lines, --

20          MR. KAPLAN: Well, hold on.

21          THE WITNESS: -- I can tell --

22          MR. KAPLAN: Hold on. Hold on. I don't  
23           think he has asked you a question. He just said  
24           read it.

1                   THE WITNESS: Sure.

2                   Okay.

3                   BY MR. BREEN:

4                   Q.         Have you had a chance to read the articl to  
5                   yourself, Mr. Lashgari?

6                   A.         Yes.

7                   Q.         Turning to page 2, if you would, please  
8                   near the bottom, there is a paragraph just about  
9                   seven lines up from the bottom that begins,  
10                  "Lashgari said the water was rough."

11                  MR. KAPLAN: Objection.

12                  BY MR. BREEN:

13                  Q.         Do you see that paragraph?

14                  A.         Yes.

15                  Q.         Do you recall speaking with a Boston Gl e  
16                  reporter named John Ellement?

17                  A.         As I said, the name sounds familiar, ye

18                  Q.         Do you recall telling a Boston Globe  
19                  reporter that the water was rough but no more t n  
20                  you had experienced the other days?

21                  A.         I don't recall precisely saying that, -

22                  Q.         Do you recall --

23                  A.         -- but --

24                  Q.         I'm sorry. Go ahead.

1       A.       But if it's -- if it's here, you're telling  
2              me I said it, I must have said it.

3       Q.       My question is, sir, whether you said that  
4              or not?

5       A.       I don't recall it.

6       Q.       Do you recall telling a Boston Globe  
7              reporter that you, Mr. Zilberman, and Mr. Chizhov  
8              were fishing uneventfully when a wave Lashgai  
9              estimated to be 20-feet tall hit them and capsized  
10             their boat?

11            MR. KAPLAN: Objection. Objection to the  
12              whole line, so that I don't interfere with his  
13              interrogation.

14            MR. BREEN: Thank you.

15            BY MR. BREEN:

16       Q.       Do you recall telling a Boston Globe  
17              reporter that you were fishing uneventfully when a  
18              wave that you estimated to be 20-feet tall hit them  
19              and capsized the boat?

20       A.       There is -- there was no such a thing as a  
21              21-foot wave. I mean, there were no 21-feet waves  
22              over there. If the reporter put it, I don't know,  
23              as a matter of excitement or he's fishing for a  
24              story, but I don't recall. Now, that I'm sitting

1       here after the fact of the accident, I do not recall  
2       a 20-foot wave at all. If it was said, the reporter  
3       put it down -- or no, I don't recall it. I don't  
4       recall a 21-foot wave at all, not that day. If  
5       there was a 20-foot wave, we wouldn't be there.

6       Q.       Sir, my question is a little bit different.  
7       Do you recall telling a reporter that there was  
8       20-foot -- a wave estimated at 20-feet tall that hit  
9       and capsized your boat?

10      A.       I don't recall it.

11      Q.       Did you read this article when it was  
12       published?

13      A.       As I told you, I usually read four or five  
14       lines, and I get tired. And I just put it --  
15       because there was no sense reading a story that  
16       went through. No, I did not read it, and this  
17       the first time that I'm actually getting a chance to  
18       read the whole thing.

19      Q.       When you saw this article in the newspaper  
20       on or after May 27th of 2003, did you read the  
21       portion of the article that said that you had  
22       estimated the wave that hit your boat to be 20-feet  
23       tall? Do you see that?

24      A.       As I said, I don't recall reading the

1           article.

2           Q.         Do you recall reading that part of it  
3           within the part of the article that you read th  
4           day?

5           A.         I don't recall it, no. This is the fir  
6           time I'm seeing here a 20-foot wave that I've s. d  
7           here, that in print that I'm seeing, but I don'  
8           recall it.

9           Q.         Do you recall ever telling anyone after his  
10          accident happened that you saw a wave that you  
11          estimated to be 20-feet tall hit the boat at th  
12          time that it capsized?

13          A.         No, because there was -- there was no  
14          21-foot wave. There was no wave that big.

15          Q.         Sir, I just want to make sure that we a :  
16          not making -- I am not missing a distinction. This  
17          article talks about a 20-foot wave, and you sai  
18          21. Are we talking about the same thing?

19          A.         Actually, I'm -- we're talking about th  
20          same thing, 20. No, there was no wave that big. I  
21          am five-foot nine, and if it was a 20-foot wave  
22          that would be three times bigger than me. No, there  
23          was no 20-foot wave. We weren't on Titanic tha  
24          day.

1 Q. And lastly, sir, do you recall telling  
2 anyone that a wave that you estimated to be 20-f et  
3 tall had hit your boat at any time after this  
4 accident?

5 A. Sitting here right now talking to you, I , I  
6 do not recall.

7 Q. Do you recall seeing a large wave headi:  
8 toward your boat before the boat capsized?

9 A. No, I do not.

10 Q. Do you recall seeing any wave heading  
11 toward your boat immediately before the boat  
12 capsized?

13 A. Nothing out of the ordinary. There wer  
14 continuous waves that were there in the ocean t t  
15 were there in the ocean but nothing out of the  
16 ordinary, no.

17 Q. How high were the waves that you would  
18 consider to be ordinary that you observed that y?

19 A. I think I have told you over and over I m  
20 terrible with measurement. You tell me how far s  
21 ten yard, I wouldn't be able to tell you how -- that  
22 it is. So I don't recall. As far as feet  
23 measurements, I don't recall it, sir, and I'm k ng  
24 very sincere about that. You keep on banging a the

same question, but I'll tell you as far as the s e  
of the wave I don't know.

3 Q. All I can do, Mr. Lashgari, is ask you  
4 questions and get --

5 A. Sure.

6 Q. -- your answer, all right? So you are  
7 totally unable to estimate the size of the waves  
8 that you saw in the area?

9 A. Correct.

10 Q. Okay.

11 A. I think that's a question -- never mind.  
12 MR. KAPLAN: Wait for a question now.

13 THE WITNESS: Okay.

14 BY MR. BREEN:

15 Q. Do you recall talking to a reporter frc the  
16 Boston Herald concerning your accident?

17 A. What's his name?

Q. Her name would be Jessica Heslam.

19 A. Not in person, no.

20 Q. Do you recall speaking

21 Jessica Heslam by telephone?

name doesn't ring a bell.

24 Q. Do you recall telling a reporter from [redacted]

1           Boston Herald that a giant wave had crept up and  
2           flipped your boat?

3           A.       What's the name of the reporter?

4           Q.       Jessica Heslam.

5           A.       I don't recall that, no.

6           Q.       Do you recall telling anyone from the Boston  
7           Herald that a giant wave had crept up and flipped  
8           the vessel?

9           A.       No, I don't.

10          Q.       Did you ever give a statement about what had  
11         taken place anytime after the accident?

12          A.       I believe so. I'm not sure if it was  
13         the -- I'm not sure who it was, but yes. I'm not  
14         sure if it was wildlife or insurance company.  
15         don't know.

16          Q.       Do you recall ever meeting or speaking to  
17         someone named Brian Morrissey?

18          A.       Same -- name sounds familiar, but I don  
19         recall speaking to him.

20          Q.       If I were to ask if you know or have ever  
21         met with or spoken with Brian Morrissey from Marine  
22         Safety Consultants, would that refresh your memory  
23         at all?

24          A.       Marine Safety Consultant, yes, that does

1           but that person's name does not.

2           Q.         Do you recall speaking with someone from  
3           Marine Safety Consultants on June 24th of 2003 in  
4           order to give that person a statement?

5           A.         I recall I talked to somebody, but as far as  
6           that specific date, no.

7           Q.         Do you recall when it was that you talked  
8           with somebody about what had taken place on the day  
9           of your accident?

10          A.         Are you looking for a time frame, or are you  
11          looking for a date, because I don't remember?

12          Q.         If you are able to give a time frame, that would  
13          be helpful.

14          A.         I would say it was maybe -- I don't know --  
15          a couple of weeks after the accident.

16          Q.         Is your date of birth July 4th of 1962?

17          A.         Yes, sir.

18          Q.         Is your Social Security number 026-58-06?

19          A.         Yes, sir.

20          Q.         Do you recall telling Mr. Morrissey that you  
21          had seen a large wave heading toward the boat before  
22          the boat capsized?

23          A.         I'm sorry. Who is he?

24          Q.         Do you recall telling Brian Morrissey c

1           Marine Safety Consultants that you had seen a large  
2           or giant wave heading toward your boat before the  
3           boat capsized?

4           A.       Negative. Once again, I repeat myself.  
5           There was no huge wave that day. There was no  
6           20-foot wave. You can check with the Navy. You can  
7           check with the Coast Guard. There was no 20-foot  
8           wave. I don't know if the myth came in from a  
9           reporter trying to put this story in there or what  
10          have you, but there was no huge wave that hit us  
11          that day.

12          Q.       Mr. Lashgari, I understand your testimony in  
13          that respect. The questions I am asking are with  
14          respect to what you told the person from Marine  
15          Safety Consultants.

16          A.       I don't recall if I've said that.

17          Q.       Did you tell Mr. Morrissey of Marine Safety  
18          Consultants on June 24th of 2003 that your boat had  
19          been hit by a "very big one," referring to a wave?

20          A.       I was hit with a big emotional accident that  
21          I went down, and as I said, once again, in that time  
22          span when it happened to me, everything was huge. I  
23          don't know if you have ever been in that situation  
24          or not. My life was in front of me. That was huge.

1           That was huge. I can just feel it in my bones r ht  
2           now, that my life that day was almost gone.

3           Anything -- if you came and you helped n  
4           that day, you would have been my God. Everythir  
5           was huge to me that day.

6           So if I had said the big one, yeah, that was  
7           my life that was going. So I don't know about  
8           measurements. I don't know about thing. I thi  
9           those are the information you need to talk to tl  
10           Coast Guard about, the size of the waves that d .

11           I am not an expert. I'm terrible with  
12           measurement. I am not good with time span, but  
13           know that day I almost died. I almost died.

14           Something had to be wrong with that God amn  
15           boat that day. Something had to be wrong becau  
16           the -- I'm a -- I am a good judge of situation. If  
17           the situation was that bad, we would have not g e  
18           in. We wouldn't have been there. I wouldn't h e  
19           been here talking to you if this situation was  
20           something that I wouldn't have felt comfortable  
21           with. So I don't -- I mean, what's the questic  
22           again?

23           Q.         My question, Mr. Lashgari, is whether y i  
24           told Mr. Morrissey of Marine Safety Consultants that

1       your boat was hit with a "very big one," referring  
2       to a wave?

3       A.       Sitting here talking to you right now, I  
4       don't recall it. I may have. I may have not, but I  
5       don't recall saying that. And if -- there's -- it  
6       was impossible. There was no huge wave. So I don't  
7       know where this statement came from over there, but,  
8       no, I don't recall it, sir.

9                    MR. BREEN: Just off the record for a  
10          minute.

11                   (Brief recess.)

12                   MR. BREEN: Can we mark that article,  
13          please?

14                   THE REPORTER: Sure.

15                   (Defendants' Exhibit No. 1 was marked for  
16          identification.)

17                   (Discussion off the record.)

18                   BY MR. BREEN:

19       Q.       Sir, I have marked this article that we  
20       talked about earlier, The Boston Globe article  
21       number 1, okay?

22       A.       Correct.

23       Q.       And it is your testimony you have never read  
24       the whole article before today?

1           A.         Correct. To be honest with you, I didn't  
2            read the whole thing today either.

3           Q.         You had the opportunity to read the whole  
4            thing if you chose to, though, right?

5           A.         Correct.

6           Q.         And you read the part I inquired about I see  
7            at the bottom of the second page when I asked those  
8            questions --

9                    MR. KAPLAN: Okay. Now, I objected to all  
10           of this line of questioning. However, if there is a  
11           question in front of you, answer it. If there is no  
12           question, just don't talk about it.

13                   THE WITNESS: Sure.

14                   BY MR. BREEN:

15           Q.         Did you read this, the part on the second  
16           page that I inquired about at the time I asked you  
17           to look at the second page?

18           A.         That section, yes.

19           Q.         On the occasion, sir, that you spoke with  
20           the investigator from Marine Safety Consultants, you  
21           were aware that the interview was being recorded,  
22           right?

23           A.         If it was being recorded, I was -- probably  
24           was aware of it, yes.

1 Q. Have you ever seen a transcription of th  
2 interview?

3 A. Negative, sir.

4 MR. BREEN: Would you mark this, please?

5 THE REPORTER: Sure.

6 (Defendants' Exhibit No. 2 was marked for  
7 identification.)

8 MR. BREEN: This is what we got on --

9 MR. KAPLAN: Let the record show that we  
10 have all just received it today.

11 MR. BREEN: From Mr. Zilberman's attorney.

12 MR. KAPLAN: Right.

13 MR. BREEN: Correct. Well, I know the  
14 attorneys have received it, but I am going to  
15 inquire about Mr. Lashgari.

16 BY MR. BREEN:

17 Q. Sir, have you ever seen -- I am going to  
18 show you a document that is a 20-page document  
19 have marked as Exhibit No. 2. That is labeled  
20 the top and purports to be the "Transcribed  
21 Statement of Amir Lashgari," and I will ask you to  
22 take a moment and look at that, please? My question  
23 for you, sir, when you have done so is whether you  
24 have ever seen that document before?

1 A. Negative, sir. I've never seen this before.

2 Q. Do you wish to take a few minutes to look at  
3 it, or can we proceed?

4 A. I don't have really -- it's 20, 20 pages.

5 MR. BREEN: I am trying to afford the  
6 courtesy, David, of letting him look at it.

7 MR. KAPLAN: Say that again?

8 MR. BREEN: I am just affording the courtesy  
9 if he wants to look at it for a couple of minutes.  
10 I am going to inquire about it next. It is really  
11 whatever he wants to do. I can ask particular  
12 questions.

13 BY MR. BREEN:

14 Q. Mr. Lashgari, looking at the first page at  
15 the top, it says at the beginning, "My name is  
16 Brian Morrissey from Marine Safety Consultants, and  
17 I am interviewing Mr. Amir Lashgari regarding the  
18 boat accident which occurred on or about May 26  
19 2003 involving Greg Zilberman's boat in Boston  
20 Harbor."

21 Sir, does that refresh your recollection at  
22 all about who Mr. Morrissey is?

23 A. I --

24 MR. KAPLAN: Again I want to -- just before

1       you answer, I want to put on my objection to thi  
2       entire line of that questioning regarding this  
3       alleged statement.

4                  Go ahead.

5                  THE WITNESS: What's the question, sir,  
6       again?

7                  BY MR. BREEN:

8                  Q.       Just having the opportunity to review t  
9       document that begins, "My name is Brian Morrissey  
10      from Marine Safety Consultants," does that refresh  
11      your recollection at all as to who Mr. Morrissey  
12      is?

13         A.       I remember talking to somebody from Mar   e  
14      Safety Consultants, but I don't recall who Brian  
15      Morrissey is as a person. It was just -- and I  
16      thought -- I thought the accident happened on M  
17      25th. It says, 26th here. I'm not --

18         Q.       You were not involved in any accident o  
19      May 26th, were you, sir?

20         A.       I'm sorry?

21         Q.       You weren't involved in an accident on May  
22      26th, correct?

23         A.       What -- what do you mean?

24         Q.       You weren't involved in a boating accid   it

1           on May 26th, right?

2           A.         The only boating accident I was involved in  
3                   my life was the one that we're talking about.

4           Q.         Thank you.

5                   The next portion states, "Today's date :  
6                   June 24, 2003."

7                   Does that refresh your recollection at . 1,  
8                   sir, as to when you met with the individual fro:  
9                   Marine Safety Consultants?

10          A.         If it says June 24th, it must have been une  
11                   24th, but I don't remember.

12          Q.         On the occasion that you met with the  
13                   individual from Marine Safety Consultants were   u  
14                   asked a number of questions about what had take  
15                   place?

16          A.         I would -- I would assume so, yes. Yes

17          Q.         Do you remember being asked questions, .r,  
18                   by the person from Marine Safety Consultants at it  
19                   what had taken place on the day of your boating  
20                   accident?

21          A.         I don't recall details, but I recall t} : I  
22                   gave a statement.

23          Q.         Sir, if you turn please to page 7?

24          A.         Okay.

1 Q. Beginning if you would, please, sir, wit  
2 the third question from the top. You can see th  
3 it is the third cube in the left column.

4 A. Uh-huh. (Indicates affirmatively).

5 Q. Where it begins "The wave action," I wou  
6 ask you to read down for three questions and thi  
7 answers ending with, "But it wasn't that big yo  
8 know."

9 MR. KAPLAN: Well, I am going to object n  
10 another -- you know, I'm sure Mr. Lashgari can : ad.  
11 If you have a question from this alleged -- I do 't  
12 know what it is, but you can ask him the questi ,  
13 but if you are going to ask him to read, he can  
14 read.

15 MR. BREEN: Are you going to make objec ons  
16 to form by continuing to give --

17 MR. KAPLAN: Okay.

18 MR. BREEN: -- speaking objections, or

19 MR. KAPLAN: All right.

20 MR. BREEN: -- are you going to let me do  
21 my inquiry?

22 THE WITNESS: Okay. What's the questio  
23 sir?

24 BY MR. BREEN:

1           Q.         The question, sir, I am going to ask you  
2         questions about the third question from the top, and  
3         I can read it aloud to you, or you can look at it  
4         yourself. My question will be --

5           A.         Could you please read it for me, sir?

6           Q.         I certainly will.

7           A.         Thank you.

8           Q.         Sir, beginning with the portion of page  
9         which begins, "QUESTION: The wave action...when  
10        were the waves hitting you? What side of the boat?

11                  "ANSWER: The waves were hitting from the starboard  
12        side," and it is indicated in parens, "(pointing to  
13        the diagram)."

14                  "QUESTION: That is what they call the  
15        starboard side or the right side of the boat.

16                  "ANSWER: The right side. That's it.

17                  "QUESTION: How big were they?

18                  "ANSWER: Not that big. We were just, we  
19        would rock and roll, kind of rocking, but it wasn't,  
20        it wasn't that big until we got hit one very big  
21        one, but before that they weren't that big, though you  
22        know, I have a fear of dying if the waves are big;  
23        you know get me out of here, but it wasn't that big  
24        you know."

1                   Do you recall giving that answer to Mr.

2         A.        I don't.

3         Q.        -- Morrissey's question?

4         A.        I don't recall it, no.

5         Q.        On page 7 as well, sir, near the bottom  
6                   beginning with the question --

7         A.        Uh-huh. (Indicates affirmatively).

8         Q.        -- "To Shizhik," do you see where it sa:  
9                   that, sir?

10        A.        Yes, sir.

11        Q.        In response to that question, did you t l  
12                   Mr. Morrissey, "Yes, yes...I was watching was G g  
13                   was doing as he was fishing and I went to talk  
14                   him and I saw this wave that was this huge, hug  
15                   wave," and in parens, "(Phone rings. He shuts  
16                   off), close paren. This big one that I would s  
17                   that when I looked at it, it was taller than me  
18                   coming at us, not immediate at the point of imp t,  
19                   but when I looked at it, good I would say, I dc t  
20                   know about eight, nine feet...I'm not sure, I w nt  
21                   to say, it was a big one."

22                   Do you recall telling Mr. Morrissey tha in  
23                   your interview with him?

24        A.        I don't recall saying that. Once again I

1       keep on saying that there was no nine-, ten-feet  
2       wave. That day when I turned -- when I'm standi  
3       talking to Chizhik for a second, next thing, my ad  
4       is in the water. I'm trembling. I'm seeing dea  
5       in front of me. Everything was huge, but that d ,  
6       there was no wave. There was no wave that was t at  
7       high.

8             If I had said it, if you have it here th : I  
9       said it, it's out of excitement, out of somethir  
10      you've never experienced in your life before, bu I  
11      don't recall saying those things. I don't. I r ,  
12      have said that, but I don't recall. Sitting he  
13      with you, I don't recall saying a big wave, the ne  
14      wave that hit us. No, I do not recall that at : l,  
15      sir.

16       Q.       Do you deny telling Mr. Morrissey that  
17       big --

18       A.       I'm not deny -- I'm not denying, or I'm ot  
19       accepting. But I'm saying I do not recall tell g  
20       him that. He talked to me that --

21             MR. KAPLAN: Enough. Enough.

22             THE WITNESS: Thank you.

23             BY MR. BREEN:

24       Q.       Sir, with the next question, did you te

1           Mr. Morrissey in response to the question, "And w  
2 tall are you," did you give the following answer  
3 "I'm 5'9". It was a big one. I mean I saw that nd  
4 I said Oh My Jesus...I mean I saw that and it ju  
5 hit us, it just hit us and the next thing I know 'm  
6 under a boat and I didn't even feel...from the t le  
7 when I saw that, that is all I remember. I mean  
8 have tried over the past three or four weeks, I lve  
9 tried sometimes I am driving, I have stuff comir  
10 back to me and stuff. A lot of things wasn't co ng  
11 to me before...I cannot remember anything from t e  
12 time after I saw the big one. The next thing I  
13 remember the boat was flipped over and I am  
14 underneath in the air pocket over there, and I : ar  
15 like echoes..."

16           Did you give that answer to Mr. Morrissey ?

17         A.         Once again, I don't recall. See, you k p  
18 on asking me questions about the time frame. I  
19 don't recall any of those things. I don't reca .  
20 If you put Mr. Morrissey here, I wouldn't know o  
21 he is. So I don't recall saying that, sir.

22         Q.         Thank you.

23           Going to page 8, sir, about midway down the  
24 page, when Mr. Morrissey asked "Was that the fi st

1           abnormally larger wave that you guys encountered  
2           that day," did you tell him, "Yes, yes, that's t  
3           first one that I seen like that. Coming in you  
4           know, now that I think about it, it was like tha  
5           movie Perfect Storm. I mean it is just like  
6           that...that was the first one that I saw"?

7           Did you tell Mr. Morrissey that?

8           A.       Once again, sir, I don't recall telling, but  
9           it definitely was like the movie Perfect Storm  
10          because I was in the water. I was -- I was dyin .  
11          I was seeing death right in front of me.

12          Q.       What did you see when you came out from  
13          underneath the boat on that day, sir?

14          A.       When? What do you mean, from the air  
15          pocket?

16          Q.       Correct.

17          A.       What I recall when I was in that air po et,  
18          I remember total darkness, total darkness. I'm  
19          going around. There's an air pocket that I cou .  
20          breathe, and I thought for a minute I was safe ere  
21          till I started smelling fume. The fume got me ery,  
22          very dizzy.

23           I had been put under -- when I had my  
24          surgery for my sinuses, my doctor gave me the

1           prescription to go to sleep before they put me o .

2           And he told me, "Amir, go to sleep." I  
3           remember seeing my doctor above my head telling ,  
4           "Amir go to sleep" at the same time the fumes ar  
5           getting to me.

6           So I knew I was dead at that time. I ma :  
7           the choice that either I'm going to die here or ,  
8           under, swim under and go to the unknown, and to ,  
9           that was -- that took a lot of courage to do tha  
10          because I did not know how to swim. I did not w it  
11          to let go of the safety of the objects that I wa  
12          holding.

13          So I go under. I swim out, and I saw th light from underneath, which was the daylight th : I  
14          hadn't seen at that time. And I come up, and I see the two guys, Greg Chizhik and Zilberman, holdin to the side of the boat. And I'm far away from the boat. The boat is like ten, ten, 12, 15 yards, set away from me. All I know is the boat -- I'm her The boat is, like, by the -- by the wall over th :.  
21          (Witness indicating.)

22          Q.         So the point at which you came up was a distance of ten feet from the boat, --

24          A.         I don't --